

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:17-cv-60426-UU

ALEKSEJ GUBAREV, *et al.*,

Plaintiffs,

v.

BUZZFEED, INC., *et al.*,

Defendants.

**ORDER REGARDING PROCEDURE FOR
NOTIFYING IDENTIFIED NON-PARTIES ABOUT POTENTIAL UNSEALING**

THIS CAUSE comes before the Court *sua sponte*.

THE COURT has considered the pertinent portions of the record and is otherwise fully advised in the premises.

The Court is considering unsealing all materials filed in this case except for: (1) discovery materials (including but not limited to deposition testimony and responses to subpoenas) designated by non-parties as confidential (rather than designated by the parties) and (2) confidential commercial information that amounts to a trade secret.¹

To facilitate the unsealing process and insure the fair administration of justice, and pursuant to the Court's Order dated November 20, 2018 (D.E. 327) (the "Order"), the Court hereby ORDERS AND ADJUDGES the following procedure for the parties to provide notice to non-parties:

¹ The parties are forewarned that the Court is inclined to unseal expert reports and expert testimony, and anything relied upon in an expert report or in expert testimony, as well as non-expert materials speaking to damages, because the Court doubts that such information may fairly be considered so sensitive as to outweigh the interest in "promot[ing] public understanding of significant public events, including what a court does and how a court goes about adjudicating cases." *F.T.C. v. AbbVie Prods. LLC*, 713 F.3d 54, 70-71 (11th Cir. 2013).

1. On or before **Friday, December 21, 2018**, the parties SHALL file, under seal, all Acknowledgment Pages (Exhibit A to the parties' blanket protective order) executed by any non-party.
2. On or before **Friday, December 27, 2018**, the parties SHALL file, under seal, a list of all discovery materials that have been designated by a non-party as confidential.
3. On or before **Friday, December 27, 2018**, the parties SHALL take the following steps to effectuate notice:
 - a. Notice need only be provided to those non-parties who have designated material as confidential pursuant to the blanket protective order.
 - b. The notice should include, but need not be limited to, the information in the template appended to this order (the "Notice").
 - c. As to each numbered entry in the parties' sealed joint response to the Order (D.E. 377, *amended by* D.E. 378) (the "Response"), the party who does not consent to unsealing the document, information, and/or testimony designated by a non-party as confidential shall be responsible for sending the Notice, along with a copy of this order. If both parties consent, or if no parties consent, to unsealing the document, information, and/or testimony designated by a non-party as confidential, the parties jointly shall serve the Notice and this order.
 - d. The Notice directed to a non-party shall list all of the documents, testimony, and/or information which that non-party has designated as confidential and which was included in the Response, and shall also enclose courtesy copies for the non-party. The courtesy copies may be redacted as appropriate to

protect information pertaining to other non-parties. The Notice shall use a numbering system that corresponds with the numbers in the far left column of the Response. The Notice shall not identify other affected non-parties.

- e. The Notice shall be served, via certified mail, to each identified non-party at their last known primary address and, if a corporate entity, to a registered agent in the State of Florida (if one exists). Alternatively, if the non-party has appeared through counsel in this matter, the Notice may be served via e-mail to counsel, provided that counsel, in writing, waives mail service on his/her client's behalf. Any individual who has not appeared through counsel may also waive, in writing, mail service.
 - f. The parties shall file proof of service as soon as reasonably possible for each non-party.
4. No later than **fourteen (14) days** after the date of service, a non-party may file, under seal, a position statement, not to exceed **ten (10) pages** in length, as to (1) whether the non-party believes unsealing the material designated in the Notice would adversely impact the non-party, and (2) whether good cause exists to keep the material under seal, including, if good cause exists only to keep portions of the material under seal, which specific portions of the material should be redacted. Each non-party shall file only **one (1)** position statement, regardless of the volume of material designated in the Notice. No further briefing shall be permitted.
5. For the avoidance of doubt, the non-party at issue in Magistrate Judge O'Sullivan's Sealed Order dated February 23, 2018 (D.E. 144), and the non-party at issue in the Court's Order dated September 10, 2018 (D.E. 203), shall be provided notice of the

Court's potential unsealing and shall have the opportunity to file a position statement as to why the material addressed in those orders should remain under seal.

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SAMPLE NOTICE

CONFIDENTIAL LETTER – DO NOT PUBLISH

John Doe
 123 Main Street
 Anytown, USA

Re: Gubarev v. Buzzfeed, Inc., No. 1:17-cv-60426-UU (S.D. Fla.)

***TIME SENSITIVE* - POTENTIAL UNSEALING OF CONFIDENTIAL DOCUMENTS**

Mr. Doe:

You are receiving this notice (the “Notice”) pursuant to the enclosed Order Regarding Procedure for Notifying Identified Non-Parties About Potential Unsealing (the “Order”) in the above-referenced case. Certain material has been filed under seal in this case, which material [Plaintiffs] [Defendants] [the parties] believe may adversely affect you as a non-party if the Court determines that the material should be unsealed (the “Material”). You have designated the Material as “Confidential” pursuant to the parties’ protective order (D.E. 41, *amended by* D.E. 97). The Material is listed for you below and courtesy copies are enclosed, but may be redacted to protect information pertaining to other non-parties.

Pursuant to the Order, **within fourteen (14) days of the date you received this Notice**, you may file, under seal, a position statement in the above-referenced case, not to exceed **ten (10) pages** in length, as to (1) whether you believe unsealing the Material would adversely impact you, and (2) whether good cause exists to keep the Material under seal, including, if good cause exists only to keep portions of the Material under seal, which specific portions of the Material should be redacted. You may file only **one (1)** position statement, regardless of the volume of Material. No further briefing will be permitted.

This Notice constitutes warning that the Court in the above-referenced case may unseal information that you might consider to be “Confidential.” Action on your part is required.

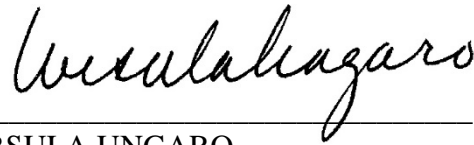
THE MATERIAL			
Parties’ ID Number	Brief Description	Plaintiffs’ Position on Sealing/Unsealing	Defendants’ Position on Sealing/Unsealing
63	Portions of transcript of deposition of John Doe	Consent to unsealing	Consent to unsealing except for lines ##-##
88	Portions of transcript of deposition of ABC Co.	Consent to unsealing	Consent to unsealing

**This Notice shall be treated as Confidential pursuant to the parties' protective order.
Publication of this Notice may result in legal action.**

Please contact [me] [us] if you have any questions.

Regards,

DONE AND ORDERED in Chambers, Miami, Florida, this 18th day of December, 2018.

A handwritten signature in black ink, appearing to read "Ursula Ungaro", written in a cursive style.

URSULA UNGARO
UNITED STATES DISTRICT JUDGE

cc: counsel of record via cm/ecf